IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

S.B. CIVIL WRIT PETIITON NO.4384/2002-BIRBAL RAM VS GURU JAMBHESWAR MAHARAJ TRUST & ORS. UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

AND

S.B. CIVIL WRIT PETIITON NO.4382/2002- KHEMA RAM VS. GURU JAMBHESWAR MAHARAJ TRUST & ORS UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 18th Sept, 2006

PRESENT
HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.Harish Purohit, Advocate, for the petitioner.
Mr.Vijay Mehta, Advocate for the respondents.

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BY THE COURT: -

Since questions of both facts and law involved in the above writ petitions are similar, therefore, they are being decided by a common judgment while dealing with the facts of S.B. Civil Writ Petition No.4384/2002-Birbal Ram Vs. Guru Jambheshwar Maharaj Charitable Trust & Ors.

Briefly stated facts of the case are that the petitioner filed an application under Section 28A of the Act of Rajasthan Shops & Commercial Establishment Act, 1958 (in short the Act of 1958) against the respondents stating therein that he was appointed on the post of Chowkidar by the respondent no.1 and was placed under the control of respondent no.2 on the payment of Rs.400/- per month. He continuously worked till his service was illegally retrenched orally on 3.12.1999 by the respondent no.2. At that time, he was drawing salary of Rs.1325/- per month for the post of Pujari. The petitioner was removed in breach of the provisions of the said Act of 1958, in that he was not served with a notice of one month and nor was given one month salary in lieu of such notice. The learned Prescribed Authority dismissed the application holding that the provisions of the Act of 1958 specially Section 28A thereof do not apply to the religious and charitable trust.

Shri Harish Purohit, learned counsel for the petitioner has argued that the respondent-trust was registered under the provisions of the Act of 1958. The petitioner has placed on record the registration certificate issued to the said trust on 31.8.1991. Not only this, it has been argued that not only the respondent trust was registered but it has also been periodically furnishing the official report with regard to its working staff as

required by Rule 22(4) of the Rajasthan Shops & Commercial Establishment Rules. Learned counsel for the petitioner argued that all these documents were placed before the learned Prescribed Authority but it has failed to apply its mind to the same.

On the other hand, Shri Vijay Mehta, learned Advocate for the respondents argued that the respondent trust was engaged in charitable and philanthropic activities and was not working for profit motive. Even if it erroneously got itself registered, the provisions contained in the Act of 1958 cannot be applied to it if they are not otherwise applicable to a charitable trust. He argued that the respondent-trust was exempted from Income Tax on receipt of donation under Section 80G of the Income Tax Act only because it was a charitable trust.

I have heard learned counsel for the parties and perused the record.

In my view when the respondent trust got itself registered under the provisions of the Act of 1958, the argument that provisions of the Act of 1958 were not applicable to it was not available to it. Not only this, after getting registration, the respondent-trust periodically furnished return in the form

performa 15 with regard to its working strength and staff and weekly holidays that were being allowed to them. In these circumstances, the reasons given by the learned Prescribed Authority for holding that the Act of 1958 and specially Section 28A would not apply to the respondent-trust cannot be sustained. The learned Prescribed Authority has cited the judgment of this Court in M/s. Rajmata Badhela Ji Sudershana kumari Junagarh, Bikaner Vs. State of Rajasthan reported in 1994 LIC 1877,but the same is distinguishable. In view of the above, the order passed by the learned Prescribed Authority deserves to be set aside.

In the result, the writ petitions are allowed. The orders of the learned Prescribed Authority dated 27.2.2002 are quashed and set aside and the matter is remanded back to the learned Prescribed Authority for its disposal afresh with a direction to decide the same within a period of six months from the date of submission of copy of this judgment before the said authority by either of the parties. There shall be no order as to costs.

(**MOHAMMAD RAFIQ),J.**

c.p.goyal/-